

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**CINDY L. LIBENGOOD, Special
Administrator to the Estate of
RALPH L. LIBENGOOD, Deceased,**

Plaintiff,

vs.

**FORTIS HEALTH INSURANCE
COMPANY and JOHN ALDEN LIFE
INSURANCE COMPANY,**

Defendants.

8:07CV444

ORDER

This matter is before the court on the plaintiff's Motion for Leave to Serve More Than Fifty Interrogatories ([Filing No. 29](#)). Specifically, the plaintiff seeks leave to serve 67, rather than the 50 interrogatories allowed by the February 20, 2008 Order for Initial Progression of Case. **See** [Filing No. 17](#) - Order. Neither the motion or brief ([Filing No. 30](#)) indicates the plaintiff attempted to confer about this matter with the defendants, even though the additional interrogatories are necessitated by the defendants' conduct, according to the plaintiff.

The [Civil Rules of the United States District Court for the District of Nebraska](#) provide:

To curtail undue delay in the administration of justice, this court will not consider any discovery motion unless counsel for the moving party, as part of the motion, shows in writing that after personal consultation with counsel for opposing parties and sincere attempts to resolve differences, they are unable to reach an accord. This showing shall also recite the date, time and place of such conference and the names of all persons participating in them.

See [NECivR](#) 7.1(i); **see also** [NECivR](#) 7.1(i)(1) (defining personal consultation). There is no evidence before the court showing counsel for the plaintiff attempted to confer with opposing counsel prior to filing the instant motion. The court will allow the plaintiff a brief period to rectify the oversight and to confer with counsel. Should court involvement to

determine the merits of this matter be necessary after the parties' conference, the plaintiff shall file an index of evidence including an affidavit from counsel showing compliance with [NECivR](#) 7.1(i). However, the plaintiff need not re-file the motion, brief or evidentiary materials already part of the court record. Since the plaintiff failed to file support for his motion as is required under the Nebraska Civil Rules, the motion will be held in abeyance pending compliance. Upon consideration,

IT IS ORDERED:

1. The plaintiff's Motion for Leave to Serve More Than Fifty Interrogatories ([Filing No. 29](#)) is held in abeyance pending compliance with Nebraska Civil Rule 7.1(i).
2. The plaintiff shall have to **on or before February 9, 2009**, to file a an index of evidence including an affidavit from counsel showing compliance with [NECivR](#) 7.1(i). Absent compliance with this order, the plaintiff's motion will be denied, as moot.
3. The defendant shall have ten business days from the date of the plaintiff's compliance with [NECivR](#) 7.1 to respond to the motion, if necessary.

DATED this 28th day of January, 2009.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge